

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 5160-3-18
Rule Type: Amendment
Rule Title/Tagline: Nursing facilities (NFs): ventilator program.
Agency Name: Ohio Department of Medicaid
Division:
Address: 50 Town St 4th floor Columbus OH 43218-2709
Contact: Tommi Potter
Email: tommi.potter@medicaid.ohio.gov **Phone:** 614-752-3877

I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 10/19/2018
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 5165.153, 5165.02
5. **What statute(s) does the rule implement or amplify?** 5165.157
6. **What are the reasons for proposing the rule?**

As a result of five year rule review, policy related to the nursing facility ventilator program is being updated.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

This rule sets forth an alternative purchasing model for the provision of services to ventilator dependent Medicaid individuals residing in nursing facilities (NFs). The changes to the rule are:

1. In paragraph (A), ventilator weaning is being added as a service available under the NF ventilator program.
2. In paragraph (B) (2), the definition of ventilator program is being updated to include ventilator weaning services and is being reworded for better clarity.
3. Paragraph (B) (3) is being added to include a definition for a respiratory care professional (RCP).
4. Paragraph (B) (9) is being added to include a definition for ventilator weaning.
5. Paragraph (B) (10) is being added to include a definition for ventilator weaning services.
6. Paragraph (C) is being modified to include ventilator services with weaning as a service eligible for payment at an enhanced rate.
7. In paragraph (C) (8) (a), "licensed respiratory therapist" is being replaced with "RCP," the more current terminology.
8. In paragraph (C) (9), the name of form ODM 10198 has been updated for consistency.
9. Paragraphs (C) (a) and (C) (b) have been moved to paragraphs (D) (4) and (D) (5) respectively.
10. Paragraph (D) (1) is being updated to require NFs that wish to participate in the vent program to complete an ODM form 10227 "Request to Participate in the NF Ventilator Program" and to indicate if they wish to provide ventilator services only, or both ventilator and weaning services.
11. Paragraphs (D) (4) and (5) further describe the revalidation and change of operator processes.
12. Paragraph (E) is being added to specify the criteria that must be met for NFs to provide weaning services and receive an enhanced payment.
13. Paragraphs (F) (1) (a) and (b) are being added to further clarify the enhanced payment rates for ventilator only and for weaning services.
14. Paragraph (F) (2) is being updated to include the methodology for paying for ventilator only services and weaning services, until the ventilator-associated pneumonia (VAP) threshold is determined.
15. Paragraph (F) (4) (d) is being updated to clarify that the payment rate for both ventilator dependent services and ventilator weaning services can be subject to a five percent reduction.
16. Paragraph (F)(5) is being modified to permit the enhanced ventilator weaning payment rate to continue throughout the post ventilator weaning evaluation period.
17. Paragraph (H) (1) is being modified to require NFs to use an approved ODM form "Nursing Facility Quarterly Ventilator Program Report" to submit quarterly data.
18. Paragraph (H) (2) is being deleted because the quarterly report form will include the specific information to be reported by NFs.
19. Paragraph (I) (1) is being modified to include weaning services in the compliance audit process.

20. Paragraph (I) (2) (a) is being added to specify that ODM shall terminate a NF from providing weaning services if they fail to meet the requirements in this rule. It allows for continuing to provide ventilator only services if weaning services will no longer be provided and receive the enhanced rate for ventilator only services as long as the NF meets the requirements for ventilator only services.

21. Paragraph (J) is being modified to describe different options for a facility that wishes to no longer provide weaning services, ventilator only services or both. It also provides for the notice of withdrawal of services to serve as a modification to the ODM 10198.

22. Throughout the rule, paragraphs have been re-lettered and renumbered as necessary.

23. Throughout the rule, references and terminology have been updated as appropriate.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, please explain the basis for the exemption and how an individual can find the referenced material.**

This rule incorporates one or more references to the Ohio Revised Code. This question is not applicable to any incorporation by reference to the ORC because such references are exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(A)(1).

This rule incorporates one or more dated references to the U.S. Code. This question is not applicable to any dated incorporation by reference to the U.S. Code because such reference is exempt from compliance with ORC 121.71 to 121.74 in accordance with ORC 121.75(A).

This rule incorporates one or more references to the Ohio Administrative Code. This question is not applicable to any incorporation by reference to another OAC rule because such reference is exempt from compliance with ORC 121.71 to 121.74 pursuant to ORC 121.76(A)(3).

This rule incorporates one or more dated references to an ODM form or forms. Each cited ODM form is dated and is generally available to persons affected by this rule via the "Resources" link on the ODM web site (<http://medicaid.ohio.gov>) in accordance with ORC 121.75(E).

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

11/16/2018 To update form reference dates

10/22/2018 To upload correct file type for rule and correct date references.

II. Fiscal Analysis

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will increase expenditures.

\$179,340

The net change in expenses for SFY 2019 is approximately \$179,340 which is for a six month period beginning January 1, 2019. The net change in expenses for subsequent SFYs is approximately \$358,679.

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

To participate in the NF ventilator only program, ODM estimates it will require the following costs for a "representative NF" which is typically 100 beds in Ohio.

1. In accordance with paragraph (C)(1) of this rule, a NF must be licensed, and Medicaid certified and meet the requirements for NFs in accordance with 42 U.S.C 1396r. ODM estimates it will take a NF's attorney approximately six hours at the rate of \$400.00 per hour for an estimated cost of \$2,400.00 to review a licensure application. ODM estimates it will take a NF's administrator approximately four hours at the rate of approximately \$72.00 per hour for an estimated cost of \$288.00 to prepare a licensure application. A NF must pay an initial license fee at a cost of \$320.00 per 50 beds. Considering the average NF size in Ohio is 100 beds, the initial fee is \$640.00. The total estimated amount for a one hundred bed facility is approximately \$3,328.00 for a NF provider to review and prepare an application for licensure to operate as a nursing home under ORC Chapter 3721. The ongoing annual license fee is \$640.00 for a one hundred bed facility.

2. ODM estimates it will take a NF's attorney approximately twenty hours at the rate of approximately \$400.00 per hour for a total estimated cost of \$8,000.00 to review an application for Medicare certification. The NF is required to pay \$569.00 for an enrollment application. ODM estimates it will take a NF's administrator approximately 640 hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$46,080.00 to prepare and submit a Medicare certification application. ODM therefore estimates it will cost a NF a total of approximately \$54,649.00 to review, prepare, and apply for Medicare certification to participate as a skilled nursing facility (SNF) in the

Medicare program pursuant to ORC section 5165.082 and OAC rule 5160-3-02.4. A NF is required to pay a revalidation fee of \$569.00 at least once every five years.

3. In accordance with paragraph (C)(3) of this rule, a NF must comply with the provisions in Chapters 5164. and 5165. of the Revised Code regarding provider agreements, and with the provisions in rules 5160-3-02 to 5160-3-02.2 of the Administrative Code regarding execution and maintenance of provider agreements between ODM and the operator of a NF. ODM estimates that it will take approximately two hours of attorney time at an average rate of \$400.00 per hour and two hours of administrator time at an average rate of \$72.00 per hour for a total cost of \$944.00 to execute a new provider agreement. ODM estimates that it will take approximately one hour of administrator time at an average rate of \$72.00 per hour for a total estimated cost of \$72.00 to revalidate the provider agreement at least once every five years after the initial execution of the provider agreement.

4. In accordance with paragraph (C)(4) of this rule, NFs must cooperate with ODM or its designee during all provider oversight and monitoring activities. ODM cannot estimate the adverse impact since NFs may comply with this requirement with a variety of staff and processes. In addition, the extent of cooperation required will vary by facility and issue. The cost will be determined by identifying the tasks required for this process in its facility multiplied by the number of staff hours for each position multiplied by the average pay rate plus benefits for each position and adding these costs together.

5. In accordance with paragraph (C)(5) of this rule, if a NF changes the size or location of the designated discrete unit or the number of beds in the discrete unit, the facility shall notify ODM of the change via email to nfpolicy@medicaid.ohio.gov within five business days of the change. ODM estimates it will take a NF staff person approximately fifteen minutes at the rate of approximately \$16.00 per hour for a total estimated cost of \$4.00 to comply with this requirement.

6. In accordance with paragraph (C)(6) of this rule, if a NF needs to purchase a backup generator, ODM estimates it will cost a NF approximately \$300,000 for the purchase and installation.

7. In accordance with paragraph (C)(7)(a) of this rule, if a NF becomes listed on the CMS Special Focus Facility (SFF) list, ODM estimates it will take a NF staff person approximately fifteen minutes at the rate of approximately \$16.00 per hour for a total estimated cost of \$4.00 to notify ODM of the NF being added to the SFF list.

8. In accordance with paragraph (C)(7)(b), when a NF has been graduated from the SFF program for a period of six consecutive months, the facility may submit a new request to provide ventilator services in accordance with paragraph (D) of this rule to begin admitting new individuals to the ventilator program again. ODM estimates it will take a NF administrator approximately two hours at a rate of approximately \$72.00 per hour for a total cost of \$144.00 to submit a request to become a NF ventilator program provider and to submit enough information to demonstrate that the NF meets all the requirements included in the rule.

9. In accordance with paragraph (D)(1) of this rule, a NF that chooses to participate in the ODM ventilator program shall send a written request of its intent to participate in the program to nfpolicy@medicaid.ohio.gov. ODM estimates it will take a NF administrator approximately two hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$144.00 to comply with this provision.

10. In accordance with (D)(3), (F)(4)(d)(ii), (I)(2)(c), and (I)(3)(b) of this rule, a NF may request a reconsideration by the Medicaid director or designee. ODM estimates that it will take an administrator approximately four hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$288.00 to prepare a reconsideration and submit to ODM.

11. In accordance with (C)(9), (D)(4) and (D)(5) of this rule, a NF must have an approved ODM 10198 form, "Addendum to ODM Provider Agreement for Ventilator Services in NFs." ODM estimates it will require approximately fifteen minutes of administrator time at a rate of approximately \$72.00 per hour (total estimated cost: \$18.00) to sign and return the ODM 10198. In accordance with paragraph (I)(3) of this rule, this cost is incurred at least once every five years during a provider's revalidation process and with a CHOP.

12. In accordance with paragraph (F)(4), once ODM calculates a NF's VAP baseline rate and the VAP threshold rate, for any quarter thereafter in which a NF's VAP baseline rate exceeds the VAP threshold rate, the NF must submit a plan of action. In addition, if ODM determines that a plan of action is deficient, a NF will be notified to submit a revised plan of action. If ODM approves a plan of action or revised plan of action, the NF shall submit to ODM a statement of completion of its plan of action within fifteen calendar days of the completion date via email. ODM cannot estimate the adverse impact since ODM cannot anticipate which of these steps a NF will be required to complete, the number and extent of deficiencies that must be addressed and a NF may comply with each of these requirements with a variety of staff and processes. The cost will be determined by identifying which of the steps a NF is required to complete, the tasks necessary to complete for each step, the persons responsible for each task, and the number of hours required for this process, and multiplying the staff hours for each position by the average pay rate plus benefits for each position and adding these costs together.

If a NF's VAP rate exceeds the VAP threshold rate for two consecutive quarters, ODM may reduce the NF's ventilator program payment rates by a maximum of five percent for one full quarter. ODM cannot estimate the adverse impact because ODM cannot know in advance what percentage, if any, a NF's rate for ventilator only services or ventilator weaning services will be reduced or the number of individuals who might be impacted by a reduction in rates. The cost could be calculated by multiplying the number of individuals receiving services by the rate reduction for the period of sanction.

13. In accordance with paragraph (H)(1) of this rule, each ODM NF ventilator program provider shall submit quarterly reports to ODM. ODM estimates that it will take

approximately six hours per quarter of a NF admissions coordinator's time at a rate of approximately \$35.00 per hour for an estimated annual cost of \$840.00 to maintain the information required for quarterly reporting. ODM estimates it will take approximately two hours of administrator time at a rate of approximately \$72.00 per hour for a total cost of \$144.00 to submit each quarterly report which is an estimated annual cost of \$576.00.

14. In accordance with paragraph (I)(2) of this rule, a NF that fails to continue to meet the requirements of the rule will be terminated from the ventilator program. ODM cannot estimate the adverse impact to a NF terminated from any portion of the ventilator program because ODM cannot predict the number of individuals in the NF's ventilator program. If a NF continues to provide the services outside the ventilator program, the adverse impact will be the difference between the enhanced rate and the per diem rate multiplied by the number of individuals on ventilators at the NF.

15. In accordance with paragraph (J) of this rule, a NF that chooses to no longer participate in the ODM NF ventilator program shall send notice of the withdrawal to ODM via email. ODM estimates it will take approximately fifteen minutes of administrator time at a rate of approximately \$72.00 per hour for an estimated total cost of \$18.00 to notify ODM if they choose to no longer participate in the program.

To participate in the NF ventilator program with weaning services, ODM estimates it will require the following costs which are in addition to the costs of the basic ventilator program:

1. In accordance with paragraph (E)(1), a NF must have an approved ODM 10198 with approval to provide ventilator weaning services. A NF that chooses to participate in the ODM ventilator program shall send a written request to nfpolicy@medicaid.ohio.gov. ODM estimates it will take a NF administrator approximately two hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$144.00 to comply with this provision. A NF that has an approved ODM 10198, and wishes to provide weaning services, can send a written request to nfpolicy@medicaid.ohio.gov. ODM estimates that it will take a NF administrator approximately one-half hour at the rate of approximately \$72.00 per hour for a total estimated cost of \$36.00.

2. In accordance with paragraph (E)(2), a NF must have a weaning protocol in place established by a physician trained in pulmonary medicine. ODM cannot estimate the adverse impact of this provision since some NFs may already have this level of staffing in place. The NF can estimate the cost of establishing a weaning protocol by identifying the persons responsible for developing the protocol with the physician, the number of hours required, and multiplying the staff and physician hours by the average pay rate plus benefits for each position and adding these costs together.

3. In accordance with paragraph (E)(3), a NF must have an RCP with training in basic life support on-site eight hours per day, seven days per week and available by phone during the remaining hours of the day during the weaning period. ODM estimates the

cost of providing an RCP for 8 hours a day, 7 days a week, at approximately \$40.00 per hour at approximately \$2,240.00 per week.

4. In accordance with (E)(4), a NF must have a registered nurse with training in basic life support on-site 24 hours per day, seven days per week during the weaning period. ODM cannot estimate the cost of a registered nurse on site 24 hours per day seven days per week during the time that an individual is being weaned because the cost is based on a NF's current RN staffing and the additional RN hours required for compliance. The daily cost can be calculated by multiplying the NF's average RN pay rate plus benefits by the additional hours a NF would need to meet this requirement.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**
14. **Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

III. Common Sense Initiative (CSI) Questions

15. **Was this rule filed with the Common Sense Initiative Office? Yes**
16. **Does this rule have an adverse impact on business? Yes**

- A. **Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes**

In accordance with section (C) of this rule, a NF who wishes to participate in the ODM NF ventilator program shall be licensed and Medicaid certified and meet the requirements of 42 U.S.C. 1396r. A NF must also maintain a valid provider agreement with ODM.

- B. **Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? Yes**

A NF will be terminated from the program if they fail to continue to meet the ventilator program eligibility requirements. If a facility's ventilator-associated pneumonia (VAP) rate exceeds the VAP threshold rate for two consecutive quarters, the NF may receive a reduced payment rate for ventilator only services and if approved for ventilator weaning services, a reduced payment rate for ventilator weaning services.

- C. **Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

1. In accordance with paragraph (C) (5) of this rule, if a NF changes the size or location of the designated discrete unit, or the number of beds in the discrete unit, the facility shall notify ODM of the change via email within five business days of the change.
2. In accordance with paragraph (C) (7) (a) of this rule, a NF participating in the ventilator program that becomes part of the Centers for Medicare and Medicaid Services (CMS) Special Focus Facility (SFF) Program (SFF) must notify ODM of the SFF status within one business day of receipt of the CMS SFF letter and attach a copy of the letter.
3. In accordance with paragraph (C) (7) (b) of this rule, when a NF has been graduated from the SFF program for a period of six consecutive months, the NF must submit a new request to participate in the ODM NF ventilator program in accordance with paragraph (D) (1) of this rule.
4. In accordance with paragraph (D) (1) of this rule, a NF who wishes to participate in the ODM NF ventilator program shall send a written request to nfpolicy@medicaid.ohio.gov. The request shall demonstrate that the NF is capable of fulfilling all of the requirements specified in this rule. A NF approved for participation in the program must sign and submit a provider agreement to ODM which must be revalidated at least once every five years and with a change of operator.
5. In accordance with paragraph (H) of this rule, to receive payment for ventilator services under the ODM ventilator program, a NF shall provide quarterly reports to ODM. In accordance with paragraph (F) (4) of this rule, for any quarter in which a NF's VAP rate exceeds the VAP threshold rate, the NF shall provide a plan of action.
6. If the submitted plan of action is deficient, the NF shall submit a revised plan of action. If ODM approves a plan of action, the NF shall submit to ODM a statement of completion of their plan of action within fifteen calendar days of their completion date via email.
7. In accordance with paragraph (J) of this rule, a NF that chooses to no longer provide weaning services, or to participate in the ODM NF ventilator program, must send a notice of withdrawal to ODM.

Rule Summary and Fiscal Analysis

Part B - Local Governments Questions

1. Does the rule increase costs for:

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| A. Public School Districts | No |
| B. County Government | Yes |
| C. Township Government | No |
| D. City and Village Governments | No |

2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.

If a facility choose to participate in the NF ventilator only program, the estimated cost of compliance for county owned nursing facilities is as follows:

1. In accordance with paragraph (C)(1) of this rule, a NF must be licensed, and Medicaid certified and meet the requirements for NFs in accordance with 42 U.S.C 1396r. ODM estimates it will take a NF's attorney approximately six hours at the rate of \$400.00 per hour for an estimated cost of \$2,400.00 to review a licensure application. ODM estimates it will take a NF's administrator approximately four hours at the rate of approximately \$72.00 per hour for an estimated cost of \$288.00 to prepare a licensure application. A NF must pay an initial license fee at a cost of \$320.00 per 50 beds. Considering the average NF size in Ohio is 100 beds, the initial fee is \$640.00. The total estimated amount for a one hundred bed facility is approximately \$3,328.00 for a NF provider to review and prepare an application for licensure to operate as a nursing home under ORC Chapter 3721. The ongoing annual license fee is \$640.00 for a one hundred bed facility.

2. ODM estimates it will take a NF's attorney approximately twenty hours at the rate of approximately \$400.00 per hour for a total estimated cost of \$8,000.00 to review an application for Medicare certification. The NF is required to pay \$569.00 for an enrollment application. ODM estimates it will take a NF's administrator approximately 640 hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$46,080.00 to prepare and submit a Medicare certification application. ODM therefore estimates it will cost a NF a total of approximately \$54,649.00 to review, prepare, and apply for Medicare certification to participate as a skilled nursing facility (SNF) in the Medicare program pursuant to ORC section 5165.082 and OAC rule 5160-3-02.4. A NF is required to pay a revalidation fee of \$569.00 at least once every five years.

3. In accordance with paragraph (C)(3) of this rule, a NF must comply with the provisions in Chapters 5164. and 5165. of the Revised Code regarding provider agreements, and with the provisions in rules 5160-3-02 to 5160-3-02.2 of the Administrative Code regarding execution and maintenance of provider agreements between ODM and the operator of a NF. ODM estimates that it will take approximately two hours of attorney time at an average rate of \$400.00 per hour and two hours of administrator time at an average rate of \$72.00 per hour for a total cost of \$944.00 to execute a new provider agreement. ODM estimates that it will take approximately one hour of administrator time at an average rate of \$72.00 per hour for a total estimated cost of \$72.00 to revalidate the provider agreement at least once every five years after the initial execution of the provider agreement.

4. In accordance with paragraph (C)(4) of this rule, NFs must cooperate with ODM or its designee during all provider oversight and monitoring activities. ODM cannot estimate the adverse impact since NFs may comply with this requirement with a variety of staff and processes. In addition, the extent of cooperation required will vary by facility and issue. The cost will be determined by identifying the tasks required for this process in its facility multiplied by the number of staff hours for each position multiplied by the average pay rate plus benefits for each position and adding these costs together.

5. In accordance with paragraph (C)(5) of this rule, if a NF changes the size or location of the designated discrete unit or the number of beds in the discrete unit, the facility shall notify ODM of the change via email to nfpolicy@medicaid.ohio.gov within five business days of the change. ODM estimates it will take a NF staff person approximately fifteen minutes at the rate of approximately \$16.00 per hour for a total estimated cost of \$4.00 to comply with this requirement.

6. In accordance with paragraph (C)(6) of this rule, if a NF needs to purchase a backup generator, ODM estimates it will cost a NF approximately \$300,000 for the purchase and installation.

7. In accordance with paragraph (C)(7)(a) of this rule, if a NF becomes listed on the CMS Special Focus Facility (SFF) list, ODM estimates it will take a NF staff person approximately fifteen minutes at the rate of approximately \$16.00 per hour for a total estimated cost of \$4.00 to notify ODM of the NF being added to the SFF list.

8. In accordance with paragraph (C)(7)(b), when a NF has been graduated from the SFF program for a period of six consecutive months, the facility may submit a new request to provide ventilator services in accordance with paragraph (D) of this rule to begin admitting new individuals to the ventilator program again. ODM estimates it will take a NF administrator approximately two hours at a rate of approximately \$72.00 per hour for a total cost of \$144.00 to submit a request to become a NF ventilator program provider and to submit enough information to demonstrate that the NF meets all the requirements included in the rule.

9. In accordance with paragraph (D)(1) of this rule, a NF that chooses to participate in the ODM ventilator program shall send a written request of its intent to participate in the program to nfpolicy@medicaid.ohio.gov. ODM estimates it will take a NF

administrator approximately two hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$144.00 to comply with this provision.

10. In accordance with (D)(3), (F)(4)(d)(ii), (I)(2)(c), and (I)(3)(b) of this rule, a NF may request a reconsideration by the Medicaid director or designee. ODM estimates that it will take an administrator approximately four hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$288.00 to prepare a reconsideration and submit to ODM.

11. In accordance with (C)(9), (D)(4) and (D)(5) of this rule, a NF must have an approved ODM 10198 form, "Addendum to ODM Provider Agreement for Ventilator Services in NFs." ODM estimates it will require approximately fifteen minutes of administrator time at a rate of approximately \$72.00 per hour (total estimated cost: \$18.00) to sign and return the ODM 10198. In accordance with paragraph (I)(3) of this rule, this cost is incurred at least once every five years during a provider's revalidation process and with a CHOP.

12. In accordance with paragraph (F)(4), once ODM calculates a NF's VAP baseline rate and the VAP threshold rate, for any quarter thereafter in which a NF's VAP baseline rate exceeds the VAP threshold rate, the NF must submit a plan of action. In addition, if ODM determines that a plan of action is deficient, a NF will be notified to submit a revised plan of action. If ODM approves a plan of action or revised plan of action, the NF shall submit to ODM a statement of completion of its plan of action within fifteen calendar days of the completion date via email. ODM cannot estimate the adverse impact since ODM cannot anticipate which of these steps a NF will be required to complete, the number and extent of deficiencies that must be addressed and a NF may comply with each of these requirements with a variety of staff and processes. The cost will be determined by identifying which of the steps a NF is required to complete, the tasks necessary to complete for each step, the persons responsible for each task, and the number of hours required for this process, and multiplying the staff hours for each position by the average pay rate plus benefits for each position and adding these costs together.

If a NF's VAP rate exceeds the VAP threshold rate for two consecutive quarters, ODM may reduce the NF's ventilator program payment rates by a maximum of five percent for one full quarter. ODM cannot estimate the adverse impact because ODM cannot know in advance what percentage, if any, a NF's rate for ventilator only services or ventilator weaning services will be reduced or the number of individuals who might be impacted by a reduction in rates. The cost could be calculated by multiplying the number of individuals receiving services by the rate reduction for the period of sanction.

13. In accordance with paragraph (H)(1) of this rule, each ODM NF ventilator program provider shall submit quarterly reports to ODM. ODM estimates that it will take approximately six hours per quarter of a NF admissions coordinator's time at a rate of approximately \$35.00 per hour for an estimated annual cost of \$840.00 to maintain the information required for quarterly reporting. ODM estimates it will take

approximately two hours of administrator time at a rate of approximately \$72.00 per hour for a total cost of \$144.00 to submit each quarterly report which is an estimated annual cost of \$576.00.

14. In accordance with paragraph (I)(2) of this rule, a NF that fails to continue to meet the requirements of the rule will be terminated from the ventilator program. ODM cannot estimate the adverse impact to a NF terminated from any portion of the ventilator program because ODM cannot predict the number of individuals in the NF's ventilator program. If a NF continues to provide the services outside the ventilator program, the adverse impact will be the difference between the enhanced rate and the per diem rate multiplied by the number of individuals on ventilators at the NF.

15. In accordance with paragraph (J) of this rule, a NF that chooses to no longer participate in the ODM NF ventilator program shall send notice of the withdrawal to ODM via email. ODM estimates it will take approximately fifteen minutes of administrator time at a rate of approximately \$72.00 per hour for an estimated total cost of \$18.00 to notify ODM if they choose to no longer participate in the program.

To participate in the NF ventilator program with weaning services, ODM estimates it will require the following costs which are in addition to the costs of the basic ventilator program:

1. In accordance with paragraph (E)(1), a NF must have an approved ODM 10198 with approval to provide ventilator weaning services. A NF that chooses to participate in the ODM ventilator program shall send a written request to nfpolicy@medicaid.ohio.gov. ODM estimates it will take a NF administrator approximately two hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$144.00 to comply with this provision. A NF that has an approved ODM 10198, and wishes to provide weaning services, can send a written request to nfpolicy@medicaid.ohio.gov. ODM estimates that it will take a NF administrator approximately one-half hour at the rate of approximately \$72.00 per hour for a total estimated cost of \$36.00.

2. In accordance with paragraph (E)(2), a NF must have a weaning protocol in place established by a physician trained in pulmonary medicine. ODM cannot estimate the adverse impact of this provision since some NFs may already have this level of staffing in place. The NF can estimate the cost of establishing a weaning protocol by identifying the persons responsible for developing the protocol with the physician, the number of hours required, and multiplying the staff and physician hours by the average pay rate plus benefits for each position and adding these costs together.

3. In accordance with paragraph (E)(3), a NF must have an RCP with training in basic life support on-site eight hours per day, seven days per week and available by phone during the remaining hours of the day during the weaning period. ODM estimates the cost of providing an RCP for 8 hours a day, 7 days a week, at approximately \$40.00 per hour at approximately \$2,240.00 per week.

4. In accordance with (E)(4), a NF must have a registered nurse with training in basic life support on-site 24 hours per day, seven days per week during the weaning period.

ODM cannot estimate the cost of a registered nurse on site 24 hours per day seven days per week during the time that an individual is being weaned because the cost is based on a NF's current RN staffing and the additional RN hours required for compliance. The daily cost can be calculated by multiplying the NF's average RN pay rate plus benefits by the additional hours a NF would need to meet this requirement.

- 3. Is this rule the result of a federal government requirement? No**
- A. If yes, does this rule do more than the federal government requires? *Not Applicable***
- B. If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?**
- Not Applicable*
- 4. Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:**

A. Personnel Costs

To participate in the NF ventilator program only, ODM estimates it will require the following personnel costs for a "representative NF" which is typically 100 beds in Ohio.

1. In accordance with paragraph (C)(1) of this rule, a NF must be licensed, and Medicaid certified and meet the requirements for NFs in accordance with 42 U.S.C 1396r. ODM estimates it will take a NF's attorney approximately six hours at the rate of \$400.00 per hour for an estimated cost of \$2,400.00 to review a licensure application. ODM estimates it will take a NF's administrator approximately four hours at the rate of approximately \$72.00 per hour for an estimated cost of \$288.00 to prepare a licensure application. The total estimated personnel cost is \$2,688.00.

2. ODM estimates it will take a NF's attorney approximately twenty hours at the rate of approximately \$400.00 per hour for a total estimated cost of \$8,000.00 to review an application for Medicare certification. ODM estimates it will take a NF's administrator approximately 640 hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$46,080.00 to prepare and submit a Medicare certification application. The total estimated personnel cost is \$ 54,080.00.

3. In accordance with paragraph (C)(3) of this rule, a NF must comply with the provisions in Chapters 5164. and 5165. of the Revised Code regarding provider agreements, and with the provisions in rules 5160-3-02 to 5160-3-02.2 of the Administrative Code regarding execution and maintenance of provider

agreements between ODM and the operator of a NF. ODM estimates that it will take approximately two hours of attorney time at an average rate of \$400.00 per hour and two hours of administrator time at an average rate of \$72.00 per hour for a total cost of \$944.00 to execute a new provider agreement. ODM estimates that it will take approximately one hour of administrator time at an average rate of \$72.00 per hour for a total estimated cost of \$72.00 to revalidate the provider agreement at least once every five years after the initial execution of the provider agreement.

4. In accordance with paragraph (C)(4) of this rule, NFs must cooperate with ODM or its designee during all provider oversight and monitoring activities. ODM cannot estimate the adverse impact since NFs may comply with this requirement with a variety of staff and processes. In addition, the extent of cooperation required will vary by facility and issue. The cost will be determined by identifying the tasks required for this process in its facility multiplied by the number of staff hours for each position multiplied by the average pay rate plus benefits for each position and adding these costs together.

5. In accordance with paragraph (C)(5) of this rule, if a NF changes the size or location of the designated discrete unit or the number of beds in the discrete unit, the facility shall notify ODM of the change via email to nfpolicy@medicaid.ohio.gov within five business days of the change. ODM estimates it will take a NF staff person approximately fifteen minutes at the rate of approximately \$16.00 per hour for a total estimated cost of \$4.00 to comply with this requirement.

6. In accordance with paragraph (C)(7)(a) of this rule, if a NF becomes listed on the CMS Special Focus Facility (SFF) list, ODM estimates it will take a NF staff person approximately fifteen minutes at the rate of approximately \$16.00 per hour for a total estimated cost of \$4.00 to notify ODM of the NF being added to the SFF list.

7. In accordance with paragraph (C)(7)(b), when a NF has been graduated from the SFF program for a period of six consecutive months, the facility may submit a new request to provide ventilator services in accordance with paragraph (D) of this rule to begin admitting new individuals to the ventilator program again. ODM estimates it will take a NF administrator approximately two hours at a rate of approximately \$72.00 per hour for a total cost of \$144.00 to submit a request to become a NF ventilator program provider and to submit enough information to demonstrate that the NF meets all the requirements included in the rule.

8. In accordance with paragraph (D)(1) of this rule, a NF that chooses to participate in the ODM ventilator program shall send a written request of its intent to participate in the program to nfpolicy@medicaid.ohio.gov. ODM estimates it will take a NF administrator approximately two hours at the rate of

approximately \$72.00 per hour for a total estimated cost of \$144.00 to comply with this provision.

9. In accordance with (D)(3), (F)(4)(d)(ii), (I)(2)(c), and (I)(3)(b) of this rule, a NF may request a reconsideration by the Medicaid director or designee. ODM estimates that it will take an administrator approximately four hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$288.00 to prepare a reconsideration and submit to ODM.

10. In accordance with (C)(9), (D)(4) and (D)(5) of this rule, a NF must have an approved ODM 10198 form, "Addendum to ODM Provider Agreement for Ventilator Services in NFs." ODM estimates it will require approximately fifteen minutes of administrator time at a rate of approximately \$72.00 per hour (total estimated cost: \$18.00) to sign and return the ODM 10198. In accordance with paragraph (I)(3) of this rule, this cost is incurred at least once every five years during a provider's revalidation process and with a CHOP.

11. In accordance with paragraph (F)(4), once ODM calculates a NF's VAP baseline rate and the VAP threshold rate, for any quarter thereafter in which a NF's VAP baseline rate exceeds the VAP threshold rate, the NF must submit a plan of action. In addition, if ODM determines that a plan of action is deficient, a NF will be notified to submit a revised plan of action. If ODM approves a plan of action or revised plan of action, the NF shall submit to ODM a statement of completion of its plan of action within fifteen calendar days of the completion date via email. ODM cannot estimate the adverse impact since ODM cannot anticipate which of these steps a NF will be required to complete, the number and extent of deficiencies that must be addressed and a NF may comply with each of these requirements with a variety of staff and processes. The cost will be determined by identifying which of the steps a NF is required to complete, the tasks necessary to complete for each step, the persons responsible for each task, and the number of hours required for this process, and multiplying the staff hours for each position by the average pay rate plus benefits for each position and adding these costs together.

12. In accordance with paragraph (H)(1) of this rule, each ODM NF ventilator program provider shall submit quarterly reports to ODM. ODM estimates that it will take approximately six hours per quarter of a NF admissions coordinator's time at a rate of approximately \$35.00 per hour for an estimated annual cost of \$840.00 to maintain the information required for quarterly reporting. ODM estimates it will take approximately two hours of administrator time at a rate of approximately \$72.00 per hour for a total cost of \$144.00 to submit each quarterly report which is an estimated annual cost of \$576.00.

13. In accordance with paragraph (J) of this rule, a NF that chooses to no longer participate in the ODM NF ventilator program shall send notice of the withdrawal to ODM via email. ODM estimates it will take approximately fifteen minutes of administrator time at a rate of approximately \$72.00 per hour for

an estimated total cost of \$18.00 to notify ODM if they choose to no longer participate in the program.

To participate in the NF ventilator program with weaning services, ODM estimates it will require the following personnel costs which are in addition to the costs of the basic ventilator program:

1. In accordance with paragraph (E)(1), a NF must have an approved ODM 10198 with approval to provide ventilator weaning services. A NF that chooses to participate in the ODM ventilator program shall send a written request to nfpolicy@medicaid.ohio.gov. ODM estimates it will take a NF administrator approximately two hours at the rate of approximately \$72.00 per hour for a total estimated cost of \$144.00 to comply with this provision. A NF that has an approved ODM 10198, and wishes to provide weaning services, can send a written request to nfpolicy@medicaid.ohio.gov. ODM estimates that it will take a NF administrator approximately one-half hour at the rate of approximately \$72.00 per hour for a total estimated cost of \$36.00.

2. In accordance with paragraph (E)(2), a NF must have a weaning protocol in place established by a physician trained in pulmonary medicine. ODM cannot estimate the adverse impact of this provision since some NFs may already have this level of staffing in place. The NF can estimate the cost of establishing a weaning protocol by identifying the persons responsible for developing the protocol with the physician, the number of hours required, and multiplying the staff and physician hours by the average pay rate plus benefits for each position and adding these costs together.

3. In accordance with paragraph (E)(3), a NF must have an RCP with training in basic life support on-site eight hours per day, seven days per week and available by phone during the remaining hours of the day during the weaning period. ODM estimates the cost of providing an RCP for 8 hours a day, 7 days a week, at approximately \$40.00 per hour at approximately \$2,240.00 per week.

4. In accordance with (E)(4), a NF must have a registered nurse with training in basic life support on-site 24 hours per day, seven days per week during the weaning period. ODM cannot estimate the cost of a registered nurse on site 24 hours per day seven days per week during the time that an individual is being weaned because the cost is based on a NF's current RN staffing and the additional RN hours required for compliance. The daily cost can be calculated by multiplying the NF's average RN pay rate plus benefits by the additional hours a NF would need to meet this requirement.

B. New Equipment or Other Capital Costs

In accordance with paragraph (C)(6) of this rule, if a NF needs to purchase a backup generator, ODM estimates it will cost a NF approximately \$300,000 for the purchase and installation.

C. Operating Costs

1. In accordance with paragraph (C)(1) of this rule, a NF must pay an initial license fee at a cost of \$320.00 per 50 beds. Considering the average NF size in Ohio is 100 beds, the initial fee is \$640.00. The ongoing annual license fee is \$640.00 for a one hundred bed facility.

2. The NF is required to pay \$569.00 for an enrollment application for Medicare certification and a revalidation fee of \$569.00 at least once every five years.

D. Any Indirect Central Service Costs

None.

E. Other Costs

1. If a NF's VAP rate exceeds the VAP threshold rate for two consecutive quarters, ODM may reduce the NF's ventilator program payment rates by a maximum of five percent for one full quarter. ODM cannot estimate the adverse impact because ODM cannot know in advance what percentage, if any, a NF's rate for ventilator only services or ventilator weaning services will be reduced or the number of individuals who might be impacted by a reduction in rates. The cost could be calculated by multiplying the number of individuals receiving services by the rate reduction for the period of sanction.

2. In accordance with paragraph (I)(2) of this rule, a NF that fails to continue to meet the requirements of the rule will be terminated from the ventilator program. ODM cannot estimate the adverse impact to a NF terminated from any portion of the ventilator program because ODM cannot predict the number of individuals in the NF's ventilator program. If a NF continues to provide the services outside the ventilator program, the adverse impact will be the difference between the enhanced rate and the per diem rate multiplied by the number of individuals on ventilators at the NF.

5. Please explain how the local government(s) will be able to pay for the increased costs associated with the rule.

The enhanced rate paid under the NF ventilator program is estimated to exceed any additional costs of the NF ventilator program.

6. What will be the impact on economic development, if any, as the result of this rule?

ODM does not anticipate that this rule will have a significant impact on economic development.